

MINUTES

PLANNING COMMITTEE

September 4, 2013

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Nadine K. Nakamura, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Lihue, Kaua'i, on Wednesday, September 4, 2013, at 10:47 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum (*excused at 12:34 p.m.*)
Honorable Ross Kagawa
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Nadine K. Nakamura
Honorable Gary L. Hooser, Ex-Officio Member
Honorable Jay Furfaro, Ex-Officio Member (*excused at 3:25 p.m.*)

There being no objections, the Committee recessed at 10:47 a.m.

There being no objections, the Committee was called back to order at 1:40 p.m., and proceeded on its agenda items as follows:

C 2013-271 Communication (07/16/2013) from Ian K. Jung, Deputy County Attorney, recommending Council approval of a Grant of Pedestrian and Parking Easements relating to Kahuaina Plantation Subdivision (S-2007-02) and Kahuaina Plantation Subdivision Phase II Subdivision (S-2009-15):

- Grant Of Pedestrian And Parking Easements; concerning real property identified as Lot 15-A (TMK (4) 5-1-003:006), Lot 15-D (TMK (4) 5-1-003:032) and Lot 15-K (TMK (4) 5-1-003:039).

[This item was deferred to October 2, 2013.]

Chair Nakamura: Thank you. My intent for this is to defer this item, but I would like to take public testimony first. The reason for the deferral is that the County Attorney Ian Jung welcomed into the world, a newborn a few days ago, Cannon Hanakoa Jung. We just want to congratulate Ian and his family, and we will be taking public testimony. Do we have anyone who signed up to testify?

There being no objections, the rules were suspended to take public testimony.

ALLISON S. ARAKAKI, Council Services Assistant I: We have
Jack Lundgren.

Chair Nakamura: Thank you so much for patiently waiting this morning and can you introduce yourself for the record?

JACK LUNDGREN: You are welcome. My name is Jack Lundgren and I am here to testify on the trail access out there in Kilauea. I want to

apologize to the Council for stepping in front of the camera earlier this morning. I did not realize I was on the microphone there. I have been hiking up and down that coastline for over forty-five (45) years and there used to be many more open public accesses. Back in late 1980's and early 1990's, I was appointed to the Na Ala Hele Trails and access Advisory Council along with several others. Our goal was always to open accesses and make them more available. Now, I understand the access that they are offering is from Ko'olau Road with quite a long walk. This is a big property, three hundred sixty (360) acres, and I think it should be more convenient. I really would like to recommend two (2) accesses, one on the north end of the property and one on the south end of the property. I think the access should go through the property and out near the coastline because fisher persons or older people, to have them walk that long distance is not really reasonable and we have got plenty of precedence. I do not know if – I am not sure if my testimony was handed out because I thought I might not be back this afternoon. But Peter Morimoto, did you give it to them? Hot off the press. There is a lot of precedence. If you look at the Marriott-old Kaua'i Surf, public access is right down near the coastline and it also has restrooms and shower facilities nearby. The Sheraton Kaua'i has parking on the property and also, after a long battle that Fred Jeggar finally got us the restrooms down there and the showers. In Princeville, if you go to Queen's Bath, you will see that the parking lot there is very often packed full. I do not think there was enough long-term planning to provide for more parking there. Keālia Kai has restrooms, showers, and parking. It is a little walk to the bike path, but it is a very pleasant one through the trees and shade. Larsen's Beach, you drive down that dusty road, but you get right above the conservation zone and you have access. I think those should be the models and in my testimony I think you will see the maps showing the internal roadway that they are proposing. This is a big project, almost three hundred sixty (360) acres, as I said.

Chair Nakamura: That is your first three (3) minutes
Mr. Lundgren, and you have another three (3) minutes.

Mr. Lundgren: Thank you very much. I will try to wrap up
it pretty quickly here. I have a summary in my testimony that I gave you. I am getting a little old so I got thrown off my pace here. As we climb into the future, we are going to need these accesses more and more and it is just – I have seen so many closed off. We used to be able to drive right down to that Kapuhi Point which was very spectacular spot. So, my suggestion is do not just accept this, try to negotiate with the landowner. I think what I was going to say is they have a roadway within their project and it would be perfectly easy to put parking down closer. I think another, if you are familiar with Pāpa'a, the access there, they did that right through that project. The idea is to get it done early before they have all of their infrastructure because then if the County wanted to condemn an easement and go through the eminent domain process it would be much more expensive. That is about it. Thank you very much.

Chair Nakamura: Thank you. I think we have a question for
you. Councilmember Kagawa.

Mr. Kagawa: Thank you, Jack, for your testimony. I agree
with a lot of what you said regarding getting down. I think we need better access for our local people to go down and enjoy fishing and relaxing down there. I think a mile is unreasonable to walk down. I just wanted to see if on the map you could maybe point out your recommendations so that we can visually see it.

Mr. Lundgren: This is their quad map. On their project, they have a roadway design. Where you see that yellow highlighting, up at the top is Kapuhi Point. That is where they had the setting for that movie, Paniolo, or the castaway cowboy. It is very dramatic with great, big, pool/blowhole and then there are lots of rocks along the coastline and that Pākalā Point is the southern border. Basically, they have straight boundary lines as far as I could tell from looking at the map and what I have submitted to you.

Mr. Kagawa: Basically, you are saying if we can have two (2) accesses, one at Pākalā Point and one along the boundary about Kapuhi Point?

Mr. Lundgren: Coming to those areas, close to it, there is a little bit of a cliff side when you get out in the conservation zone and so there is going to be some steeper trails. But that is basically what I am saying or within the property itself, splitting out. I do not know if you can see it on one of the illustrations.

Mr. Kagawa: The other option would be to use the interior road and split it out so it accesses at both ends of the property?

Mr. Lundgren: Yes. Well, they will not be quite at the ends. They do have dirt road going down there to Kapuhi Point.

Ms. Yukimura: We have a pointer.

Mr. Lundgren: JoAnn, I am colorblind and I am getting old, too.

Ms. Yukimura: Somebody help him.

Mr. Kagawa: Well, I think I kind of got the picture. What I would like to see and this is maybe asking for too much, is I would like to see a continuous access along that shoreline that is available. That would be the total win-win for a fisherman and for our local people who enjoy going to the beach. But, that other suggestion that you made certainly works fine as well.

Mr. Lundgren: I am glad you mentioned that because when I was on the Na Ala Hele Committee, we had the abstractor go in and do a little research and we were on a project down near Pāpaʻa Bay. They said there was an *ala loa* that basically...we did not get it all pinned down with metes and bounds, but they said that they think historically there was a coastal trail all along the way and that is why on my summary I thought that it would be appropriate for the County and State working together to relocate the *ala loa*. If remnants could not be found, they could reproduce it. But I just wanted to mention one other thing, the project developers, I have known Sean Smith since he was a kid and Mr. Bowman, the man who is also a property owner. I admire them. They have done a lot for the community with wildlife and police officers and I appreciate that, but this is so important for the future of Kauaʻi. I am old now, so I probably will not be able to go there as much anymore.

Chair Nakamura: Thank you. Are there any other questions for Dr. Lundgren?

Ms. Yukimura: I just want to say thank you Dr. Lundgren, for being here. You on and off throughout the years have been a frequent testifier on behalf of the public interest, so thank you.

Mr. Lundgren: Thank you. Now that I am retired, I am too busy to be here as often as I would like. Thank you very much.

Chair Nakamura: Thank you for your testimony.

Mr. Lundgren: Thank you.

Chair Nakamura: Do we have anyone else on the list or would anyone else like to testify?

RICKY WATANABE, County Clerk: Committee Chair Nakamura, they have signed up, but we were not sure what item they were going to speak on, the Kallai's.

TIM KALLAI: Aloha Council, Tim Kallai for the record. I too, first and foremost want to thank Dr. Lundgren for coming and testifying. As a *kupuna* who has been around for quite some time, has seen the changes, has also actively participated on trail committees and these things. It is these kind of things that when you hear the testimony from them, reiterating to us not by books but by physical site visits and things of this nature, when they talk about the importance of improving a coastal lateral trail which we want to thank Councilmember Kagawa for bringing up. For the ease of access, for preserving our cultural gathering rights as well as just cultural practices regardless of what they may be, as well as just for the sake of recreation. Also, to reiterate the points once again, that these accesses should have the concept of our *kupuna* and our families in the forefront, with ease that we should be able to get to these and yet at the same time, I am sort of ambivalent with this because the whole process is, as much as I love this area and all of these other things, I would like to see them preserved in their natural state so that it does not become a Disneyland or Waikīkī on the island of Kaua'i. Let us go all running down to Waipake, that is the furthest thing what I want. But where I am torn is if we do not ask for this and preserve this now before the developers come in, that means that we, even the locals, have a tendency of seemingly losing these concepts or these accesses or availabilities to them. So, that is about the only thing that at this point I would like to bring out about this particular topic. Please take that into consideration for us. We would certainly love to keep this and preserve this. Once again, for those of us that live here all the time, that wish to continue and practice as in the standing of cultural practices, of those kind of thing and for my *keiki* and *mo'opuna* in the future to do the same as well too. *Mahalo niu.*

Chair Nakamura: Councilmember Yukimura.

Ms. Yukimura: Thank you, Tim. I appreciate your really balanced perspective on how to give appropriate access for *kupuna* and native rights gatherers, but how not to make it a basic tourist place. I think it is about management of the access and we might want to explore—I guess I am asking if you have either now have examples of how there has been good public access management in other States or parts of this State, that might give us some clues about how to manage that balance?

Mr. Kallai: Well, Councilmember Yukimura, I guess the best to my mind, if I would like to use examples, there are a number of places throughout the State that I think do this, but Big Island comes to mind. There is a wonderful book, I believe that maybe Hope has tried to pass on to you dealing with trails and the things that they have done on the Big Island and how they managed them. If she is to come up and possibly testify on this topic, hopefully she can give you the exact name of the book and the author of this. It basically does state some things of how they do manage them, how the community has volunteer systems to help so that it alleviates some of the burden on the County, at least with financial responsibility to help maintain some of these as well as going back to the old traditional concept of *maka'āinana*. It is the eyes of the people, the local people that use this the most that can help even the landowner with some of the apparent problems that may be created there, whether it is people illegal camping or once again, if there is *ōpala* that needs to be picked up. When you use a trail such as this and if you have people hold dearly in their heart, these issues have a tendency of cleaning themselves up rather than perpetuating by restricting those of us locals that have that care or desire or connection to the *āina* in that sense, that yes, we are to help patrol and also to mitigate. Basically, if I can, if Hope comes up and can give you that book and give you a great example of how the Big Island manages their trail system, since they do have quite a few.

Ms. Yukimura: I would be interesting in learning about them. Thank you.

Chair Nakamura: Thank you, Tim.

Mr. Kallai: You are welcome, Nadine.

Chair Nakamura: Would anyone else like to testify? Yes, Hope. Again, the intent here is to defer this until October 2, 2013 when Ian Jung will be back to brief us. Thank you, Hope.

HOPE KALLAI: Aloha, Hope Kallai. I wanted to talk about Koontz because I thought that that was this agenda item was, the one that is being deferred. Koontz has to do with private land, not public land and the *ala loa* is an historic trail held by the State in fee simple. So, nothing about the *ala loa* pertains to Koontz. The proposed public easement may have to jump through Koontz and Noland and Doland hoops, but not the *ala loa*. I was confused by what Mr. Jung had said about that. So, I just wanted to bring that point to light, that nothing about the *ala loa* is considered under the Koontz decision because it is a public land hold by the State. The book he was referring to is Trails From Stepping Stones To Curbstones by Russell Apple. It is a Bishop Museum press book and it is available in our libraries. It documents how the trails around the islands here, the oldest were on the coast side and then the next one in was usually for single-file horses and then double and then a cart trail and wagon and then car, and where there is not as much vegetation as we are blessed with here, like on the Big Island you can see these concentric ring trails and they almost age date themselves by their placement and by the need for speed. So, as people started having to move quicker and quicker, they came away from the shoreline. I look forward to being able to address Koontz and Noland and Doland more. Thank you.

Chair Nakamura: Sure, thank you.

Ms. Kallai: I did present testimony on that and I had a PowerPoint and most of the PowerPoint was all pertinent laws unique to Hawai'i. Laws that may not be preempted by Federal considerations because like the Kuleana Act, does not exist on the Mainland. The Highways Act of 1892 that Lili'uokalani wrote right before she got arrested, those things they do not have parallels. So, there are Native American gathering rights, but it is not quite Public Access Shoreline Hawai'i (PASH). So, there are a lot of things. This Koontz decision only came down in June of this year and I do not believe it has been tested, especially been tested in Hawai'i. I would be very reticent to have the County of Kaua'i be the one to test case PASH. I do not think we want to go down that trail at all. Thank you.

Chair Nakamura: Thank you, Hope. Would anyone else like to testify on this? Seeing no one – oh, can you please introduce yourself?

PETER WALDAU: Peter Waldau, for the record. I just want to reiterate agreeing with the testimony that I heard about the importance of locating the lateral *ala loa* as kind of in conjunction with this pedestrian easement that is before Council at this point. This proposed *mauka/makai* easement kind of ends up in sort of a rocky cliff and without the lateral coastal *ala loa* in conjunction, kind of at the same time, we really do not have any way to get to the beaches or fishing areas or anything. It is kind of like a dead-end. The other point is trying to keep the idea that the *ala loa* at Waipake is actually like a word of a sentence. In other words, that for example Ian Jung's presentation mentioned three (3) different *ala loa* locations on different properties and I am just trying to encourage that a broader view that this *ala loa* is this regional trail and that maybe this is the time to look at the broader *ala loa*. The other point is about outside Counsel. I have heard about trying to coordinate County and State efforts to delineate the *ala loa* and we have mentioned the name Tom Pierce, as outside Counsel who is willing to come forth at this point and help. I want encourage that as a possibility. Then other than that, I just wanted to point out that the first page here is Raymond McCormick indicating that if we are looking at eighty (80) homes, that we need to be looking at perhaps a turn lane up Kūhiō Highway, that was an issue. Now, they have already five (5) wells and now there is a proposal for three (3) more, that is kind of like the next page. I guess my request to County Council would be to invite the Planning Commission to look at the new items in this proposed project. Then other than that, these other items are kind of dovetailing in with the broader *ala loa*. For example...

Chair Nakamura: Peter, just to let you know.

Mr. Waldau: Was that my three (3) minutes?

Chair Nakamura: No.

Mr. Waldau: Let me...

Chair Nakamura: The item on the agenda has to do with the Kahuaina Plantation Subdivision, so not the *ala loa*. As it pertains to this project, you can proceed?

Mr. Waldau: So, it is really those two (2) pages that I am going to bring it to your attention. One is the McCormick...

Chair Nakamura:
an additional three (3) minutes.

That is your first three (3) minutes, you have

Mr. Waldau: The number of wells, it is kind of like – I mean the entire Moloa'a Farm lots is that served by one (1) well and is Kilauea town is served by two (2) wells and now we have eight (8) wells proposed for this subdivision? Is the intent to export water beyond boundaries of the project? I am just asking the question and so maybe Council could invite the Planning Commission to look at the new elements of this Kahuaina project.

Chair Nakamura: Thank you for your testimony. Would anyone else like to testify? Can you please introduce yourself?

RICHARD SPACER: Richard Spacer, for the record. Thank you, Chair and members. All I want to say on this agenda item, which seems to be the first of three (3) if we are taking testimony on all three (3) Waipake agenda items today, is just a combination question and comment. I believe the Bill No. was 777, triple 7, that related to this County Council requiring at some point the Planning Commission to in turn require that developers of subdivisions provide public access. Now, I do not know enough about this Bill, but what I would like to request of the Committee in this period of deferment until October, is that you all have a look at this Bill if you have not already and decide if there is or is not any wiggle room for that to be enforced or not. My point being, if Falko Partners wants this subdivision, it seems to be my understanding that they have to provide the access to the coast because this is a coastal property. So, it would seem that if there is no wiggle room on that point, the only issue that remains is exactly where it is located which was the subject of two (2) previous State Conservation District Use applications, one of which saw the northern most part of the property as we heard a previous time was rejected, resulting in the approval for this more southerly location. The other part of that is what conditions may the community request that this be remanded perhaps back to the Planning Commission? So, then that also raises the question, do you have the authority to say, we have heard from the community, they have some concerns, we want this to go back to the Planning Commission first, and then come back to us later? You have already heard some of the community concerns that the parking lot is too far *mauka*. Last time we heard there were no bicycles allowed on this pedestrian trail and we have a bicycle-friendly forward look County. So, there are certainly some things that need to be addressed and I will talk about the *ala loa* next time. Bill No. 777, I would like to know more about it and I would really like the Council and this Committee to know more about it and how it relates to the Planning Commission and this whole process. That is all I had to say on this agenda item.

Chair Nakamura: Thank you very much. Are there any questions? Councilmember Yukimura.

Ms. Yukimura: Are you speaking about a Bill or an Ordinance?

Mr. Spacer: I believe it was referred as a Bill. The number I have quoted to me is 777, but whatever it may be called a Bill or an Ordinance or a different number, there was some legislation that I believe directed the Planning Commission to have subdivisions to provide access and I would like to know, as a citizen, what latitude if any, is involved in that?

Ms. Yukimura: If it is requiring the Planning Commission to do something, it is a law, an Ordinance.

Mr. Waldau: Okay, thank you.

Ms. Yukimura: It is already in place and it may be that this access which we are approving was done pursuant to that law, whether the Planning Commission fulfilled the spirit and letter of the law is something that we would have to look at. Thank you.

Mr. Waldau: Thank you.

Chair Nakamura: Thank you. Would anyone else like to testify?

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Chair Nakamura: Comments? Councilmember Kagawa.

Mr. Kagawa: Oh, no. I am ready to defer.

Mr. Rapozo: I just have one.

Chair Nakamura: Sure, Councilmember Rapozo.

Mr. Rapozo: Thank you. I just would like to send over a request to the State, Mr. McCormick, from Highways based on an E-mail he sent over to Mr. Waldau regarding the discovery, if you will, that the home sites is going to be a lot more than what was proposed. According to the E-mail from Mr. McCormick, he is saying that if there are now eighty (80) homes, that any agreements made with the developer have changed and they will need a full traffic impact analysis prior to Hawai'i Department of Transportation (HDOT) approval. I would like communication sent over to Mr. McCormick, attaching the ads of the project, and I think we have already have that prepared and send it so that he can do an assessment of the potential site because I believe it will require a traffic study simply because it is a much different project then what was reported to the State. Thank you, and see if we can get a response by the next Committee Meeting.

Chair Nakamura: We have that follow-up to the State Department of Transportation and Councilmember Kagawa.

Mr. Kagawa: Thank you, Chair. I just am looking at this map of the Kahuaina Plantation on the website, I guess, and you can see the interior roads. It really has a solution to what we really want. The roads lead to both ends all the way down towards the beach. What a lovely compromise that would be, if we could have a parking lot at each end and it definitely would be considered access because it would be much closer to the beach. I know that is probably something that the developer would not want because it affects privacy or what have you. For me, it is what is fair for our community? If we allow the subdivision or it is already allowed to happen, this beach will primarily be a public beach for the public who live near the beach site. They will be the only ones to go down there, take their coolers down, go fish, dive or what have you, while the rest of our community would have to walk a mile or I guess be sited for trespassing or what

have you and it bothers me that we have not learned the lessons from the past. I think it is not sitting well with myself nor the community in that we are always discussing these things after the fact. I think we have to somehow see if we can go back and get some compromise so that our public can have reasonable access in either of both areas. So, that is all I have. Thank you.

Chair Nakamura: Thank you. Any other Councilmembers? Then I will entertain a motion to defer to October 2, 2013.

Upon motion duly made by Mr. Rapozo, seconded by Ms. Yukimura, and carried by a vote of 4:0:1 (Councilmember Bynum was excused), C 2013-271 was deferred to October 2, 2013.

PL 2013-03 Communication (08/13/2013) from Councilmember Rapozo, requesting the presence of Ian K. Jung, Deputy County Attorney, to discuss the Grant of Pedestrian and Parking Easements that was a condition of the Kahuaina Plantation Subdivision and Kahuaina Plantation Subdivision Phase II, and its impact on the location and the State's establishment of the Ala Loa Hawaiian Trail System. **[This item was deferred to October 2, 2013.]**

Chair Nakamura: Again, we will open this to public testimony and the intent is to defer to October 2, 2013. Councilmember Rapozo, would you like to say anything before we take public testimony?

Mr. Rapozo: No, we can take the public testimony first. Thank you.

There being no objections, the rules were suspended to take public testimony.

HOPE KALLAI: Aloha again, Council. We are going to testify together and help us watch the time. We have prepared a PowerPoint with some background about what Ian called were "allegations" about the *ala loa* and to us it is a reality and we just wanted to give some background. We called this "Nana I Ke Kumu," look to the source and these are the source documents, the maps, that State recognizes. This is the first government survey of Kaua'i, 1878, performed by United States Geological Survey (USGS), a guy named C.S. Kittridge and the original is on file at the Smithsonian. The biggest one I have seen is at Grove Farm. Wai'oli has got one. It is as big as between these two (2) doors. It is the most giant map. This is the authority map, 1878. It is not the earliest one, but it is the one that is most documented. The surveyors have their file notes and everything is there. The next map has the trails in red. They knew there were trails on the Na Pali, but the people did not have time to map them. The red is the coastal trail. The purple is the public road, the *alanui a puni*. These two (2) maps are the first government survey, the other map that cited is the next one. It is called the Emerson Map and it is actually by my favorite map maker, but it is not the most accurate. Ursula Emerson was a missionary wife on the fifth boat. When she made this map she has only been in the islands for eighteen (18) months and she never left O'ahu. So, we have a map made by Kaua'i made by somebody that never stepped foot on this island. It is a really good map and it was amazing that she was a homeschool teacher, more than a homeschool teacher, she was a missionary school marm, and used this for teaching the children. She and her husband are both buried in Haleiwa. They had some kids who were very important

and most of all she wrote letters. She wrote so many letters that seven (7) people in her home town named their babies Ursula. The first generation and the next generation, they were all Ursulas. So, the school teachers had a really hard time. She even mapped Ni'ihau and never step foot there. So, her maps are really good, but not the most accurate and what she probably did was trace somebody else's maps, Dennison, who was hired to map the Missionary routes which is what he did, not the coastal cultural trails. So, this map pre-dates the first government survey by fifty-five (55) years, but it is not the most accurate. It is made by somebody who never had stepped foot on our island. This is a blowup of the Ko'olau part and you can see the foot trail or the dotted line trail along the coast there.

Chair Nakamura:

That is your first three (3) minutes.

Ms. Kallai: The *ala loa* had different uses and purposes over different times. Basically, it is a foot trail along the coast. The main reason on this part of the coast is for *limu*, it is a cultural byway. This reef, Ka'aka'anui Reef, which fronts three (3) different *ahupua'a* is the most documented and managed marine resource in the world, really, in Hawai'i nei for sure and generations of families weeded this reef, to this day it is still tended. It is still cared for. We all understand the importance of *limu*, the basis of the Hawaiian diet was fish, poi and *limu*. In Moloa'a, the *ala loa* trail has been recognized by the State and Na Ala Hele. It is an archaeological site with a number and it goes past an archaeological site that has been radiocarbon dated to a little bit earlier than 1400. So, the trail goes past a six hundred (600) year old site. It is an ancient trail. There are other old maps that have the dotted line trails and concentric circles around the coast. It is not rocket science and it is not an allegation. People traversed the island by these coastal routes. The post office in the 1860's went one way and came back the other. So, they went Tuesday on the *ala loa* and Thursday on the public road. Bill Huddy, from Moloa'a, hiked it to Pila'a for *limu*. He is not the only one of course, but this is the one of the only ones written up. Another reason in contact period was for shipwrecks, for getting the things off the beach all up and down the coast. There were an awful lot of shipwrecks that probably got us our lighthouse. So, back to the first government survey, the yellow map was traced so you could see it a little bit easier. Here it is, colored again. The red coastal route and the purple public road. It was the public road, the *alanui a puni*, the government road and the old government road and now Ko'olau Road. It has had many different names, but you can see where it looks like a gappy tooth on the bottom one, this is the allegation that the *ala loa* was actually on Ko'olau Road. So, it is only on this one *ahupua'a* that we have this allegation being made. You can see the illogicalness of the whole thing because the *limu* that people were accessing to pull is in the reef right there, fronting where this notch is. This is the allegation that has us a little bit upset, that it is on the government road.

Chair Nakamura:

That is your six (6) minutes.

Ms. Kallai: This is Tim's time. This is what Mr. Jung cited as his source. It is a missionary journal or a cousin of a missionary wrote the journal. Chester S. Lyman came to Kaua'i for three (3) weeks and this is what Mr. Jung cited. This is Mr. Lyman on the upper left with the chops. He was visiting the person on the lower left and that is the Lyman house in Hilo. This is what he wrote. It is a good journal entry. There had just been a huge flood on Kaua'i and he documented that and he documented how long it took to get from Wailua, how many miles it was. But his miles are way off. If this is what Ian is citing as proof that the *ala loa* is really on the government road, this is not a very credible witness, a person

who was here one (1) time and that is all. The Missionaries traveled, especially the Calvinist Missionaries, traveled the public roads on horseback. One of the reasons was for the services in Pīla'a, in the Kukui Grove, they were held at least once a week for twenty (20) or thirty (30) years, and there were several hundred people. So, it was a very traveled throughway. This map mapped the *kuleanas* in 1892 and they are colored in this one and in the next one, the three (3) that we want to talk about. Land Court awards 6586, Grant 523 and Grant 530 to Wilcox. Wilcox got all of Lepeuli for five hundred one dollars and sixty-eight cent (\$501.68). Kane bought twenty (10) acres *mauka* and ten (10) acres *makai*. But these three (3) were on the public road and in their deed in Hawaiian, they were referred to as *alanui*, not *ala loa*. So, Mr. Jung was calling it *ala loa*. In the deed it is called as *ke alanui*. So, I just wanted to make that clarification. The three (3) deeds that we have say *alanui*. This is another missionary journal. When Wilcox got Lepeuli, there was an exclusion for a school and a church in 1850. So, on the public road, there was a school and a church. This is the Ko'olau Hui'ia Church which is now in Anahola because the hippies stole all of the wood. The Catholics had the coastal trail, the Calvinists had the public road. The Catholic Missions were on the coast, the Calvinist outstation meeting houses like the Pīla'a and Lepeuli, were on the public road and these people would try to avoid each other. The French Counsel, Dudoit, had land in Princeville...

Chair Nakamura:
three (3) additional minutes.

That is Tim's three (3) minutes and you have

Ms. Kallai: Three (3) more, we are almost there. This is the church in Ko'olau. This school lasted for over one hundred ten (110) years, the Ko'olau, on the public road. It was not the *ala loa*. This is from the movie and this is the school from the movie. But we are talking about the easement dedication here that is in yellow and connecting with the red *ala loa*. So, the *ala loa* is held in fee simple by the State and is just what we need to locate and it does go along the whole coast. This is from the Conservation District Use Permit (CDUP) that Falko did when they combined the *kuleanas*. This was their public access map and it has the proposed easement on the bottom joining the *ala loa*. The State words at the bottom are from the CDUP and the State of Hawai'i is claiming fee simple interest on the coastal trail shown on those two (2) maps, 432 Ursula's Map, and 1395 the first government survey known as the *ala loa*. The State does not call it an allegation, the State calls it a reality. To get down to this area, the proposed easement has to *puka* through an arch site. It is Arch Site No. 767 to Lu'uloa. It was his *kuleana* and it ends up at a steep, rocky cliff. It is only about ten (10) or fifteen (15) feet high, but it is still straight up and down cliff. So, that is why we are asking for a site visit. There is one thousand one hundred (1,100) foot of rock walls in Lu'uloa's archaeological site right there. I know Kahuaina likes rock walls. They spent a whole bunch of money building a modern rock wall. So, we are just asking that the ancient rock wall be honored in this easement consideration. Waipake Beach was the purpose of this easement being granted, not to access Lepeuli. The access, I believed, was to access Waipake and it is a gorgeous beach. Opportunities for solitude, open space vistas, excel, and there are some very unique features. It is a gorgeous beach and Mr. Jung only talked about going to Waipake. So, there is the subdivision map and at the very top you can see there is a paved road proposed all the way down to the end. It is meant for those houses, but this is the alternate access that maybe could be considered for some kind of access. Go back a bit. The proposed easement starts right down there at the water well and skirts along the fence all the way down. But there are some houses really close to the easement area. Go real fast. Finish it up. It terminates at a rocky coastal bluff that this

needs a site visit. This needs to be talked about because to access the beach safely, you have to go on the *ala loa*, either right or left. We really need the State to locate it because from this easement, you cannot get to the beach. Thank you for your time.

Chair Nakamura: That was pretty amazing. Well done. Any questions for Hope or Tim?

Mr. Hooser: Good job.

Chair Nakamura: Councilmember Rapozo.

Mr. Rapozo: I just have a question, was this presented to the Planning Commission as well?

Ms. Kallai: We are having a really hard time figuring that out. We went in to try to get the file and for us to get the file and for us to get the file, they told us one thousand dollars (\$1,000).

Mr. Rapozo: One thousand dollars (\$1,000)?

Ms. Kallai: We remember Falko coming to KNA way back in 2006 or 2007, when it was like a six (6) unit farm Condominium Property Regime (CPR) and that is why these letters to the Department of Transportation (DOT), we were told no need for a turn lane because it is only a six (6) unit CPR and it is a financial burden on the people there. Well, now it is eighty (80) units and eighty (80) guesthouses and there is no turn lane and it is dangerous already. I have not been able to find planning. I find subdivision consideration by the Subdivision Committee which is what, two (2) or three (3) people, but no Planning Commission. I have not paid the one thousand dollars (\$1,000) yet.

Mr. Rapozo: Well, let me make it easy. Staff, if we can request the file from Planning and that is a public record. We can make an available copy to the Kallai's. One thousand dollars (\$1,000) is insane.

Ms. Kallai: Thank you.

Mr. Rapozo: Let us do it that way.

TIM KALLAI: *Mahalo.*

Mr. Rapozo: I am not sure why they would even quote you one thousand dollars (\$1,000). As far as the Planning Commission itself, did you testify? You folks did not testify?

Ms. Kallai: It has not even come up. There was a new map somehow presented to somebody March 18th that has Planning comments on it, but there was no date on the agenda. We would be there if we had a chance and that is what we are asking for, open it up for a planning hearing.

Mr. Rapozo: Well, we will definitely make that request. Thank you.

Ms. Kallai: Thank you.

Mr. Kallai:

Thank you.

Chair Nakamura:
testify.

We have one other person who is going to

RICHARD SPACER: Good afternoon again members. Richard Spacer for the record. I want to take Hope and Tim's comments from the end and work back on this agenda item. One thing that we activist have been very concerned about and it does relate to this, is something that I think the County Council approving expenditures might be able to influence more positively. I think you approved the expenditures for Ho'ike to televise our public meetings and it is been brought to my attention that while the Planning Commission Meetings are indeed televised, the Subdivision Committee of the Planning Commission Meetings which normally start at 8:30 a.m., a half an hour before camera time are not televised. This may be a possible explanation why some of us and others in the community have never heard of the Kahuaina Subdivision project until it has reached you. I would respectfully request it is relates to this agenda item of being aware of subdivision issues that we explore that possibility of how to fund that extra half hour and maybe we will all be better aware of something really as critical as critical as a subdivision. I mean eighty (80) homes plus a possible eighty (80) guest homes, this is not a minor issue and I think the community should be able to watch at home and read these minutes more easily. My second point, as you know I support the concept of this *ala loa* trail that certainly exists, and I have not had a chance to take photographs of the area hope and Tim referred to. They are indeed correct, that if you follow the Lepeuli/Waipake boundary line straight *makai* from where the proposed parking lot will be directly along the lepeuli boundary, you do emerge to an area of ironwood trees and rocks and rock walls and you are not at the beach. So once again, to re-mention this issue, the *ala loa* trail will intersect there and that is this agenda item. Where is it? Is the *mauka/makai* pedestrian easement that is proposed going to be altered somewhat in course so as to empty on Waipake Beach which it will not presently or will the location of the *ala loa* serve as the vehicle to transport people another several hundred feet to northwest where it would empty onto Waipake Beach? Thirdly, I would like to reiterate the request to the Council for a site visit and the most useful site visit in this context, not only for the *ala loa* at Waipake this agenda item, but to walk from Ko'olau Road down to where the *ala loa* would be along the Lepeuli boundary and see for yourselves, of course there will be construction and it will be easier presumably when it is built, but to see where it will be.

Chair Nakamura:

That is your first three (3) minutes.

Mr. Spacer: Thank you. That is really all I had to say on this. Walk from Ko'olau Road down to the coast as far as you can get and come out to the ironwood trees and the rocks and see where this trail actually ends up. Thank you.

Chair Nakamura:
Mr. Spacer? Thank you.

Thank you, very much. Questions for

Mr. Spacer:

Thank you.

PETER WALDAU: Councilmembers, Peter Waldau for the record. The only point I am trying to make at this point is when Planning Commission is invited to re-look at this *ala loa*, this Kahuaina Subdivision, that the

Planning Commission also has a deferred agenda item about the *ala loa* and it is been deferred for a couple of years. It has to do with next door Lepeuli. If we are addressing this *ala loa* regionally at this time, perhaps this is the time that the Planning Commission can look at this in its entirety. In other words, looking at Waipake and Lepeuli together because they do have an agenda item deferred at this point about the *ala loa* at Lepeuli. Then the other documents I have given you are just towards that end, that the State is claiming fee simple ownership, that the agenda item that is deferred mentions that the location of a fence is going to be subject to approval by Department of Land and Natural Resources (DLNR) and Na Ala Hele to ensure public access to and along the lateral coastal trail at Lepeuli that the State has claimed that they have not approved the current fence location apparently as required by the permit, at Lepeuli. That the coastal lateral trail was voted on by the majority of the Board at the Wai'oli Cooperation at Lepeuli to give the County a choice of trails. On March 29, 2010 that was a vote of the majority of the Board of the Wai'oli Corporation, not specifically the middle trail, not specifically the lateral access way, but a choice of trails. We had the State chiming in that they owned fee simple ownership. So, to me, it was like a no-brainer, that if the property owner is offering it, the State wants it, that the County could have just taken the baton and passed it to the State. It was a no-brainer. It was in our lap at that point. How did the baton get dropped? It is a deferred item. This is something that all can be addressed now in a constructive way and I think that it would be worthwhile.

Chair Nakamura: Thank you for your testimony. We have one (1) final person who would like to testify.

JACK LUNDGREN Same characters up here all the time. I will try to make this short.

Chair Nakamura: Can you re-introduce yourself?

Mr. Lundgren: I want to thank the Kallais for that nice, historic presentation. It was very interesting.

Chair Nakamura: Can you introduce yourself again?

Mr. Lundgren: I am sorry. Jack Lundgren. I just wanted to expand on that with my experiences. I was first shown that trail back in 1966 by a Hawaiian firefighter, some of you might know Henry Panui. Starting off at Moloa'a, the trail ran along the coast and then it goes all the way into that first little bay, Ka'aka'aniu. It is a beautiful little sand beach in there and I think they were mentioning it. It was famous for the *limu*, the quality of the *limu*. The first time I was there I was enchanted by seeing these – to me, they were old ladies at the time, probably younger than me, but they were collecting the *limu* on the reef. Then the trail actually continued on over to Lepeuli, Larsen's Beach area, and of course you can go along the coast on the sand. About three (3), four (4) years ago, I communicated with some of the Councilmembers. I do not know if you will remember that, Gary. But all of a sudden a new fence was put up again and it cut off access not near Moloa'a, but closer to Ka'aka'aniu. I know a lot of these local people just do not stand for that. It has been cut a few times, but it is been put back up. For me to get to Ka'aka'aniu now, and I am seventy-two (72) years old. I have to climb the barbed fence, go down three hundred (300) yards, and then climb down the rocks on the steep shoreline to get to the beach. I can do that now, but I do not know how much longer I will be able to do it. I think this all ties in with their

presentation. I think this really should be back into the public domain. When I talked to Curt Cottrel, who was the Administrator of the Na Ala Hele about the problems I was having getting down there, I said, can we not have a prescriptive right to go along the coast where the trail has been for all of these years, at least I remember forty-five (45) years? He said you do not really need a prescriptive right because the States has this in their history. I guess the abstractor checked it out. But they do not have the metes and bounds, but they know that there was a trail that ran along there. Now, the trails is kind of overgrown and hard to find. I can still find it. I know where it is. I understand there is management concerns because there are Albatross that nest in the area and we do not want a bunch of wild dogs killing our endangered birds.

Chair Nakamura: That is first three (3) minutes and you have three (3) additional minutes.

Mr. Lundgren: Well, that is fine. I think that is enough. I just hope that the State and County working in cooperation, can help reestablish these rights for these. Thank you very much.

Chair Nakamura: Thank you very much for your testimony.

Mr. Lundgren: Thank you very much.

Chair Nakamura: Would anyone else like to testify?

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Chair Nakamura: Comments? Councilmember Rapozo.

Mr. Rapozo: I have a question for Mr. Dahilig, just one short question and it is in response to one of the questions from the testifiers about the public access as far as the Subdivision Committee. Thank you, Mike.

MICHAEL A. DAHILIG, Director of Planning: Good afternoon.

Mr. Rapozo: You heard the testimony and one of the testifiers mentioned the publication or the broadcasting of the Subdivision Committee Meetings. Who determines whether or not it gets televised or not? Is that something that the Council can do?

Mr. Dahilig: It is a good question, Councilmember. It is something that I also recall came up during our budget discussions back in April.

Mr. Rapozo: It is a public meeting, right?

Mr. Dahilig: It is a public meeting and it does not fall out of our budget directly. It falls generally under the Boards and Commissions budget. So, I am not aware as to whether that direct question was posed to them, whether they could accommodate the Subdivision Committee Meeting as part of the overall broadcast of the Planning Commission, I guess activities.

Mr. Rapozo: Is that half an hour meeting?

Mr. Dahilig: It is scheduled for half an hour. It sometimes runs longer or shorter depending on docket.

Mr. Rapozo: Right, but if it runs longer it goes into the normal 9:00 a.m. meeting anyway, right?

Mr. Dahilig: Right, yes.

Mr. Rapozo: So, it is just half an hour more, how often is the Subdivision Meeting?

Mr. Dahilig: Generally, there is a Subdivision agenda that is attached to the biweekly Planning Commission Meeting.

Mr. Rapozo: So, twice a month?

Mr. Dahilig: That is correct.

Mr. Rapozo: So, one (1) additional hour per month would be the additional fee?

Mr. Dahilig: That is correct.

Mr. Rapozo: Thank you. I would definitely want to pursue that to get that televised. I do not understand why it is not. I think it is more value to the people than the Mayor's show. I mean no offense to the Mayor's Show, but if we had to direct funds, I think the Planning Commission Subdivision Committee Meeting is probably a little more valuable to the community. If we had to give up half an hour of television (TV) time, I would definitely want to see the Subdivision Committee being broadcasted. Thank you.

Chair Nakamura: Councilmember Yukimura and then Councilmember Hooser.

Ms. Yukimura: Mike, they also raised the issue of having to pay one thousand dollars (\$1,000) to access the files.

Mr. Dahilig: Yes.

Ms. Yukimura: How is that administered?

Mr. Dahilig: We have a set formula set by the Office of Information Practices (OIP) that when an OIP request comes in, let us say for a copy of a file. They use the phrase "copy of the file," we need to calculate how much it would cost to actually duplicate the actual material that is in the file. Our subdivision files generally have a lot of large sheets and in fact, large 4x3 plans that show where the subdivision lines are going to go or wherever roads go in and the Kahuaina plans, there are two (2) actual sets. There are two (2) subdivision approvals in Lot 1 and both approvals have a lot of plans in it. Under OIP rules we charge fifty cent (\$0.50) per square foot of copying when it comes to large plans. So, that is why potentially you would see a very large amount. If the general request was to make a copy of the file, that a copy of the file would include those large plans and that is why you would see that amount being charged.

Ms. Yukimura: Are we any time in the near future going to have electronic files that could be transferred with almost no costs?

Mr. Dahilig: Certainly we do accommodate. If people ask us would it be better to provide a disk and scan the files. We do allow that service. So, if somebody would like the file to be digitally copied, we would charge how much it would cost for staff time, not necessarily for material time and then burn those on the a Compact Disk (CD) or Digital Versatile Disk (DVD).

Ms. Yukimura: When will be going paperless so that all of our files are automatically electronic?

Mr. Dahilig: I would like to have gone paperless yesterday.

Ms. Yukimura: I know you would.

Mr. Dahilig: But I think the Eplan initiative is a step towards that direction. Whether or not we are going to be completely paperless, we have taken steps at least at the Planning Commission level, to have most of our things transmitted to the Commission via digital iPads now. We do take a lot of intake digitally including our determination request. A lot of that is digital. So, we are making steps that way, but we are not an entirely paperless operation unfortunately.

Ms. Yukimura: Last question, do you have a plan for getting there?

Chair Nakamura: Councilmember Yukimura, I know there is tangential relations to the item. But I think that is a separate conversation that we can have at another time or if you want to post it as a separate Committee Meeting item.

Mr. Dahilig: Would you like me to answer the question?

Chair Nakamura: Why do you not just answer it quickly so we can go on to other questions people have regarding what is on the subject?

Mr. Dahilig: I think once Eplan review is fully implemented, I think that that will give us cause to really force all digital submittals and that is my short answer.

Ms. Yukimura: Alright. Thank you.

Chair Nakamura: Councilmember Hooser.

Mr. Hooser: To the question of charging the individuals for these specific plans, I thought the OIP allowed some discretion on not charging people. Is that true?

Mr. Dahilig: Yes, there is discretion with respect to situations where somebody in the public interest is asking for information. We have recently been instituted – OIP actually has two (2) sets of forms. One set of forms comes to us requesting the actual material, then we send back a Notice to Request

form. The form created by the Office of Information Practices actually has the waiver cap at sixty dollars (\$60) in the public interest. So, we can waive up to sixty dollars (\$60) from a discretions standpoint.

Mr. Hooser: Which actually leads me to my main question about this. I was going to spend some time later thanking the community members for their volunteerism and their engagement in this issue and I see what they are doing is a tremendous public service. My question is why is the Department of Planning not more proactive in supporting these kinds of efforts and more than that, why are there no advocates within the Department of Planning, it seems like? On this particular issue, if you look at easement, it seems like the easement that is being proposed is the lowest form of easement we can get where they can comply with the law. It is not the best option for the public. It is the best option for the developer, and the worst option for the public, a long easement from the road, no maintenance requirements. Apparently, it ends up on the rocks. Why is somebody from the Department of Planning or the Planning Commission or your Office not beating the drum on behalf of the community and advocating for the best that we can get and not accepting what looks like the worst possible option we could possibly get?

Mr. Dahilig: I understand your question, and would you like me to answer?

Chair Nakamura: The next item is right to that point. So, what I would like to do is defer this matter, go to the next item which actually asks the Planning Director those questions. If you do not mind, we will slightly defer this. If there are no questions for Mike on this matter, I would like to ask for a deferral until October 2, 2013. Discussion? Go ahead.

Mr. Kagawa: Thank you, Chair. I think as I look through these documents there is no doubt in my mind that the DLNR and the County both agree and recognize the existence of the *ala loa* that we have seen on all the maps going way back, that show that there is agreement that this *ala loa* exists, it is important, and it should be preserved. I think from the County Council, we should do all we can to preserve the *ala loa*. The goal of preserving that *lei* or walking path along our shorelines is a reasonable goal for our island especially being as beautiful as it is. I believe it is the most beautiful island on earth. We need to do all we can to not let the *lei* be broken because we cannot do it based on a technicality. We just have to make it work. It has to be continued. It has to be preserved. We have to preserve that *lei*. Thank you.

Chair Nakamura: Any other comments? Can I ask for a deferral to October 2, 2013?

Upon motion duly made by Mr. Rapozo, seconded by Ms. Yukimura, and carried by a vote of 4:0:1 (Councilmember Bynum was excused), C 2013-271 was deferred to October 2, 2013.

The Committee proceeded on its agenda items, as shown in the following Committee Reports which are incorporated herein by reference:

CR-PL 2013-08: on PL 2013-04

Communication (08/22/2013) from Committee Chair Nakamura, requesting the presence of the Director of Planning, to provide a briefing regarding the Kahuaina Subdivision, Phase II, including the subdivision approval process, approved density, conditions of approval and subdivision maps. This briefing shall also include the determination of the location and terms of the Grant of Pedestrian and Parking Easement from Falko Partners, LLC, including the parking area's distance to the shoreline, the number of parking stalls and responsibility for the maintenance of the public access. **[Received for the Record.]**

CR-PL 2013-09: on PL 2013-05

Communication (08/28/2013) from Committee Chair Nakamura, requesting the presence of the Director of Planning, to provide a status report on the renewal of Transient Vacation Rental (TVR) certificates and a briefing regarding any administrative or court proceeding involving TVR applications, certificates or operations. **[Received for the Record.]**

There being no further business, the meeting was adjourned 5:42 p.m.

Respectfully submitted,



Allison S. Arakaki
Council Services Assistant I

APPROVED at the Committee Meeting held on September 18, 2013:



NADINE K. NAKAMURA
CHAIR, PLANNING COMMITTEE